

DOCKET FILE COPY ORIGINAL
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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MAY 12 2000

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Nogales and Vail, AZ)

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MM Docket No. 00-31
RM - 9815

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS TO REC NETWORKS

Desert West Air Ranchers Corporation ("DWAR"), licensee of Station KZNO(FM), Nogales, Arizona, by its counsel, hereby replies to the "Comments of REC Networks" filed on April 12, 2000.¹ As will be discussed, REC Networks ("REC") fails to demonstrate that Vail does not deserve a first local service as proposed by DWAR. In support hereof, DWAR states as follows:

1. First, REC argues that the proposal for a first local service to Vail at the expense of Nogales' only commercial FM station is not a preferential arrangement of allotments. However, Nogales will retain commercial FM Station KOFH on Channel 256A as well as noncommercial educational Station KNOG(FM). Under the Commission's policies and past case law, DWAR has established a preferential arrangement by relying solely on noncommercial educational Station KNOG(FM) for Nogales (Priority 4) in order to provide a first local service at Vail (Priority 3). Indeed the relative size of the new community compared to the old community has not been an

1. DWAR is also aware of a Counterproposal filed on April 17, 2000 by Big Broadcast of Arizona, LLC. DWAR intends to file a Reply to that Counterproposal by the date set for replies should the Commission issue a Public Notice announcing its acceptance.

impediment. See e.g., Oshkosh, WI., et al., 10 FCC Rcd 2085 (1995) (reallotment from city of 57,000 to city of 2,059 population); Pine Bluff and Maumelle, Arkansas., 6 FCC Rcd 5119 (1991) (reallotment from city of 56,636 to city of 5,704 population); Paragould and Lake City, Arkansas., 6 FCC Rcd 3325 (1991) (reallotment from city of 15,214 to city of 1,842 population); Jessup and Midway, Georgia., 6 FCC Rcd 2196 (1991) (reallotment from city of 9,418 to city of 457 population); and Marion and Orrville, Alabama., 6 FCC Rcd 3482 (1991) (reallotment from city of 4,467 to city of 349 population). REC cites no cases supporting a contrary position.

2. In addition, in view of the fact that KOFH's permit expires on December 21, 2000, DWAR fully expects that KOFH will be operating by the time or soon after the rule making proceeding is resolved despite REC's belief to the contrary. In its comments, DWAR made a strong case for Commission consideration of the reception service provided by the 12 stations licensed to the adjacent community of Nogales, Mexico. The residents of Nogales, Arizona listen to these Mexican stations which are counted as "service" for purposes of determining how many stations serve a market under the Commission's contour overlap rules for multiple ownership. See Section 73.3555 of the Commission's Rules. The Commission should consider these stations when evaluating whether the residents of Nogales have adequate radio services available to them. In fact, due to the large number of stations operating in this market, DWAR has found it difficult to compete for listeners and now desires to serve another community and market.

3. Vail is a very attractive location for Station KZNO. It is a growing community with 3,124 residents (increased from the 1990 U.S. Census population of 550 persons). There is a considerable amount of new residential and business construction which will result in a need for local community events and an advertising outlet. In fact, in DWAR's view, that is one of the

primary reasons that the Commission decided to adopt a rule in 1989 to allow stations to change their community of license to respond to new areas of growth. The Commission recognized that there are new communities which did not exist in the 1970's or 1980's and have a need for local service. The change in community of license policy allows existing stations to leave communities which currently have local and reception services and relocate to communities in need of local service.²

4. REC also claims that DWAR's real intent is to serve Tucson. However, the proposed Vail station will have virtually no competitive impact on the Tucson market. As shown in the petition, KZNO will be only a Class A station and will be located 46 kilometers from Tucson. More importantly, the Commission has developed a standard which governs whether a community is entitled to a first local service preference. The standard for determining whether a station is moving into an urban area is as follows - - is the proposed community listed in the U.S. Census as part of an Urbanized Area or will the proposed 70 dBu contour reach at least 50% of the Urbanized Area. In this case, the Commission has already confirmed that the proposed move to Vail is not a move into an urban area.

5. REC indicates that there are several low power FM channels available to provide service to Vail. However the low power FM service will not have the same local service requirements as a full power station and the entire service is still in the state of flux at this time due to several petitions for reconsideration and pending Congressional action which may eliminate many low power FM allotments. DWAR has no objection to the addition of the low power stations at Vail

2. REC cites the impact on the Emergency Alert System that the removal of KZNO would have on Nogales. However Station KNOG is required to alert its listeners and KOFH will have the same requirement. These stations have at least as much coverage as KZNO. On the other hand, Vail residents do not receive the Emergency Alert System from any local station.

as long as it does not affect the ability of KZNO to relocate to Vail. DWAR's proposal should not preclude the low power channels mentioned by REC.


6. On the other hand, REC does state that Vail is eligible for its own radio station and that "Vail is a rapidly growing community in Pima County with its [sic] own Post Office, public services and telephone exchange." DWAR agrees and urges the Commission to grant DWAR's proposal to provide a first local service to Vail by approving KZNO's request for a change in community of license.

SUPPLEMENTAL INFORMATION

7. In its Comments, DWAR proposed the allotment of Channel 251A to Patagonia which is possible only with the removal of Channel 252A from Nogales. The Patagonia allotment will provide service to white and gray areas. DWAR predicted that coverage to be 100 sq km of white area and 20 sq. km of gray area. DWAR desires to provide more exact figures as follows. The white area figure should read 182 sq. km with a population of 637 persons and the gray area is 118 sq. km with a population of 413 persons. See attached Gain/Loss Summary. Thus, in view of the provision of two first local services (Vail and Patagonia) and significant coverage to white and gray areas made possible by the removal of Channel 252A from Nogales, DWAR urges the Commission to grant its proposal.

Respectfully Submitted,

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May 2, 2000

GAIN/LOSS SUMMARY

FACILITY DESCRIPTION	AREA (U.S.)	POPULATION (U.S.)	WHITE AREA	GREY AREA
<u>PROPOSED ADDITIONS</u>				
KZNO VAIL ACTUAL FACILITY 60 Dbu (50/50) WITH MEXICO PROTECTION (Woodstock)	2,774	255,908	NO CHANGE	NO CHANGE
PATAGONIA CIRCULAR 60 dBu WITH MEXICO PROTECTION	2,186	15,688	182 KM2 GAIN 637 Persons*	118 KM2 GAIN 413 Persons*
<u>PROPOSED DELETIONS</u>				
KZNO NOGALES ACTUAL FACILITY 215 W AT 40 METERS 60 dbu(Woodstock)	291	24,715	NO CHANGE	NO CHANGE
KZNO NOGALES ALLOCATION CIRCULAR CONTOUR 60 dbu 24.0 KM MAXIMUM FACILITY 3 KW AT 100 METERS	1,169	26,377	NO CHANGE	NO CHANGE
KZNO NOGALES ALLOCATION CIRCULAR CONTOUR 60 dbu 28.3 KM <i>FACILITY IN EXCESS OF MAXIMUM INTERNATIONAL CLASS</i> 6 KW AT 100 METERS	1,562	27,480	NO CHANGE	55 KM2 LOSS 193 Persons*

The populations within any white or grey loss and gain areas were calculated using the population figures in the 1998 Rand McNalley Commercial Atlas. The 1998 estimates population of Santa Cruz county (36,800 persons) was decreased by the populations of all listed communities with populations: Nogales, Patagonia, Rio Rico, Rio Rico East, Tumacacori, Tubac, Kino Springs, Carmen, M Canyon, Sonoita, Westgate, Elgin and Amado. The remaining population of 11,283 persons was divided by the county area of 1238 square miles (3210 square kilometers) to produce a uniform population density of 3.5 persons per square kilometer.

NOTE: ALL AREA CALCULATIONS IN SQUARE KILOMETERS

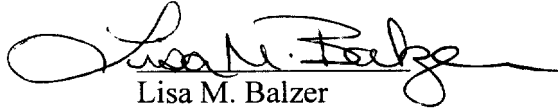
CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 2nd day of May, 2000 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **REPLY COMMENTS TO REC NETWORKS** to the following:

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* HAND DELIVERED